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Technical assistance and capacity-building

Written statement* submitted by the Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 February 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Urgent need for accountability in Yemen

Over the course of five field missions to Yemen between May 2015 and November 2016, Amnesty International has gathered information according to which all parties to the conflict, including the Saudi Arabia-led coalition and the Huthis and allied forces, have committed serious violations of international humanitarian law and violations and abuses of human rights law in ground and air attacks, some of which should be investigated as war crimes. Further, the Huthis and allied forces, including army units loyal to former President Ali Abdullah Saleh, have arbitrarily arrested and detained critics and opponents as well as journalists, human rights defenders and members of the Baha'i community, subjecting scores to enforced disappearance. Amnesty International has also found that anti-Huthi forces (also known as Popular Resistance Committees), allied with Yemeni President Abd Rabbu Mansour Hadi and the Saudi Arabia-led coalition, in Yemen's southern city of Ta'iz are leading a campaign of harassment and intimidation against hospital staff and are endangering civilians by stationing fighters and military positions near medical facilities.

To date, despite these well-documented serious violations and abuses in Yemen, including apparent war crimes, there has been no accountability.

In this context of lawlessness, impunity and abuse, there is an urgent need for accountability, with a view to investigating violations and ensuring that perpetrators are brought to justice and that victims and their families receive full and effective reparation.

The Saudi Arabia-led coalition's investigative mechanism, the Joint Incidents Assessment Team (JIAT), published a series of legal conclusions in August,¹ October² and December 2016³ relating to specific airstrike incidents suggesting that international humanitarian law (IHL) may have been violated. Based on a review of all publicly available legal and factual conclusions published by the JIAT thus far, Amnesty International is concerned that the JIAT's investigations appear to fall short of international standards of transparency, independence, impartiality and effectiveness:

- **Mandate:** It remains unclear what the JIAT's mandate is, what it will do with its findings, whether it will identify suspected perpetrators, how it will ensure prosecution of those suspected of criminal responsibility for crimes under international law, or whether it is mandated to identify systematic patterns of violations.
- **Authority:** It is unclear what powers the JIAT has to subpoena witnesses, obtain relevant documents and other evidence, ensure co-operation from government officials and members of armed forces of coalition members; and whether it has the authority to require coalition members to suspend from duty officials involved in the matters it is looking into; whether its recommendations are binding vis-à-vis coalition members and if there is a mechanism to oversee the implementation of these recommendations. If these powers are indeed absent, it

¹ Saudi Press Agency, *Joint Incidents Assessment Team (JIAT) on Yemen Responds to Claims on Coalition Forces' Violations in Decisive Storm Operations*, 5 August 2016, <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1524799>

² Saudi Press Agency, *Press Statement by the Joint Incidents Assessment Team (JIAT) on the Great Hall Incident in Sana'a*, 15 October 2016, <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1548647>

³ Saudi Press Agency, *Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement*, 6 December 2016, <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1567351>, and Saudi Press Agency, *Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement 1 Riyadh*, 6 December 2016, <http://www.spa.gov.sa/viewstory.php?lang=en&newsid=1567371>

would be a serious shortcoming undermining the prospect that the JIAT could help ensure truth, justice and reparation for victims and their families.

- **Transparency:** Information regarding the JIAT is not readily available publicly and its methodology remains unclear. Amnesty International is concerned that the following information is not public: the qualifications of its members, detailed information on its terms of reference and a detailed timeline of its work to date (published and unpublished) or a work plan. Amnesty International has not been able to find a detailed explanation of the standards that the JIAT has followed in monitoring, reporting and verifying alleged violations.
- **Impartiality:** The JIAT does not outline the criteria set out for the selection of the incidents to date. Amnesty International fears that the JIAT's legal and factual conclusions thus far indicate an inclination to absolve the coalition members of responsibility for violations. The JIAT does not state what its sources are, how it cross checks factual information and whether it interviewed victims, witnesses and medical staff. To Amnesty International's knowledge, the JIAT has not investigated a single cluster munition attack to this day.

Amnesty International has further raised concerns about the Yemeni National Commission of Inquiry, which was set up by the internationally-recognized Yemeni government, supported by Saudi Arabia. We recognize the experience and commitment that the commissioners have brought to the inquiry and appreciate the challenges facing the Commission given the ongoing conflict in Yemen. However, based on an analysis of the Commission's preliminary report and other publicly available information, Amnesty International's assessment is that in key areas the Commission's mandate and work have failed to meet key criteria set out in international standards, including those of independence, impartiality and effectiveness.

Finally, whilst Amnesty International considers the Human Rights Council's adoption of resolution 33/16 a step in the right direction, and welcomes that it mandates additional international human rights experts to be allocated to support the Office of the High Commissioner for Human Rights' office in Yemen with its monitoring and investigations, the resolution does not bestow a mandate or powers on the experts to ensure justice, accountability and reparation for any violations or abuses documented.

Based on the public information available to date, it is apparent that the only way to ensure a credible investigation that is independent, effective and transparent, is through the establishment of an independent international inquiry, established by the United Nations. This inquiry should investigate allegations of violations by all parties to the conflict in Yemen, and be given powers to ensure that suspected perpetrators are referred to prosecution in fair trials and that victims and their families receive full reparation.

Amnesty International therefore urges the Human Rights Council to:

- Support the High Commissioner's recommendation and promptly establish an international investigative body capable of looking into alleged violations by all parties to the conflict in Yemen, establishing the facts, and identifying the perpetrators with a view to ensuring that those responsible are brought to justice in fair trials and that victims and their families receive full reparation;
- Call on all parties to the conflict to:
 - Fully comply with the relevant provisions of international humanitarian law in the planning and execution of any military operations. In particular they must ensure that civilians and civilian objects are not targeted, and take necessary precautions to distinguish between civilians and fighters and between civilian objects and military objectives, and end indiscriminate and disproportionate attacks;
 - Ensure all humanitarian workers are granted freedom of movement, and ensure rapid and unimpeded delivery of impartial humanitarian relief for civilians in need. This should include streamlining of the Saudi Arabia-led

coalition's deconfliction process for the movement of humanitarian relief, which entails informing the coalition of all their movements in advance and providing coordinates of their operations so that they are not targeted;

- Ensure that prompt and full reparation is provided to victims and families of victims of unlawful attacks which resulted in human or material damage, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.
- Call on the Saudi Arabia-led coalition to immediately cease the use of cluster munitions, which are internationally banned;
- Urge all countries supplying arms, or considering the supply of arms, to any parties to the conflict to immediately suspend those arms transfers until there is no longer a substantial risk that the arms would be used to commit or facilitate serious violations of human rights or international humanitarian law in Yemen. Arms transfers to any party to the Yemen conflict must include a strict, legally binding guarantee that the end use will be in line with international humanitarian and human rights law, and that such arms transfers will not be used in Yemen.
